IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2237 OF 2000

Shri Kailash Mangesh Shirsat,)
at Post Kanchad, Tal. Wada,)
Dist. Thane.).. Petitioner

Versus

1. The Secretary,)
Gokhale Education Society,)
Prin. T.A. Kulkarni,)
Vidyanagar, Nasik-5.)

2. The Head Master,)
Gokhale Education Societies,)
Ashram School, Vaki,)
Tal. Dahanu, Dist. Thane.)

3. Gokhale Education Society,)
Nashik.)

4. Gokhale Education Society,)
Ashram School, Vaki,)
Tal. Dahanu, Dist. Thane.)

5. The Project Officer,)
Integraed Tribal Dev.Project,)
Dahanu, Dist. Thane.)

6. State of Maharashtra.).. Respondents.

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Shri M.V.Limaye for the petitioner.

S/Shri S.R.Sharma h/f M.B.Mehere for the respondent Nos.1 to 4.

Smt.M.P.Thakare, AGP holding for Shri P.P.Kakade, AGP for the respondent Nos.5 and 6.

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CORAM : R.M.S.KHANDEPARKAR &

NARESH H.PATIL, JJ

DATED : 23RD AUGUST, 2006

ORAL JUDGMENT: (Per R.M.S.KHANDEPARKAR, J)

1. Heard the learned advocates for the petitioner and the respondent Nos.1 to 4. As regards the respondent No.5 and 6, it is informed by Smt.M.P.Thakare, the learned AGP that Shri P.P.Kakade, the learned AGP appears in the matter and he is not present in the Court. However, no reason for his absence was disclosed. It is not the unusual thing for the Government's Advocates to remain absent in the matter before this Court. This had happened earlier on number of occasions and inspite of the orders having been passed issuing notices to the Law Secretary and subsequently withdrawn on the assurances by the office of the Government that the prompt steps would be taken to render necessary assistance to the Court, the failure on the part of the Government Advocates in that regard still continues.

2. In this matter, the petitioner challenges the order dated 31st March, 2000 issued by the respondent

Nos.1 and 4 threatening to discontinue the services of the petitioner on the ground that there is a direction in that regard by the respondent No.5 and that the said direction has been issued on the ground that the petitioner does not satisfy the requisite educational qualification to fill up the post of Superintendent in which the petitioner was appointed initially by the order dated 1st July, 1998, and subsequently, was reinstated after setting aside the order of termination of his services pursuant to the order of the School Tribunal dated 15th June, 1999 in Appeal No.336 of 1998.

3. The records apparently disclose that the petitioner was initially appointed on 1st July, 1998. However, his services were sought to be terminated under the order dated 9th November, 1998 issued by the respondent Nos.1 and 4. The said order was challenged by the petitioner before the School Tribunal in the said Appeal No.336 of 1998 which came to be allowed and the respondent Nos.1 and 4 were directed to reinstate the petitioner in the post of Superintendent within a period of two weeks from the date of the order without awaiting the date of approval by the respondent No.5 herein. It appears that pursuant to the said order, the petitioner was reinstated in the

said post. However, under the impugned communication dated 31st March, 2000, the petitioner was informed that his services would not be continued from the Educational Year 2000-2001 on account of intimation in that regard to the petitioner by the respondent No.5 to the effect that the petitioner does not satisfy the educational qualification to occupy the post of Superintendent.

4. While assailing the impugned order, the learned advocate appearing for the petitioner submitted that apart from the communication dated 31st March, 2000 the petition does not refer to any material regarding the alleged communication by the respondent No.5 regarding the ineligibility of the petitioner to occupy the said post on account of lack of requisite educational qualification, the G.R.dated 5th February, 2000 clearly discloses that the candidates having qualifications of H.S.C. would be entitled to occupy the post of Superintendent though the candidates having qualifications of B.P.Ed. would be given preference. It is the case of the petitioner that he has both these qualifications, and therefore, the respondent No.5 had no justification to order termination of the services of the petitioner or to refuse the approval for continuation of the petitioner

in the post of Superintendent, more particularly in view of the specific direction, in that regard, issued by the School Tribunal. Besides, the said ground was never raised in the proceedings before the School Tribunal wherein the only contention of the management was that the petitioner did not have D.Ed. qualification and that the qualification of B.Ed. was not sufficient to occupy the said post. The Tribunal having rejected the said contention, that ground is no more available to the respondents.

5. The learned advocate for the respondent Nos.1 to 4 fairly submitted that the communication dated 31st March, 2000 was issued merely on account of necessary instructions in that regard issued by the respondent No.5. But for the approval of the respondent No.5, the other respondents are helpless, and therefore, the said order was issued. In case the respondent No.5 grants necessary approval, the other respondents will have no objection for continuing the petitioner in the said post.

6. There is no assistance on the part of the respondent No.5 in the matter. Inspite of the due service of the notice, the respondent No.5 has not filed any affidavit-in-reply. As rightly submitted by

the learned advocate for the petitioner, the G.R.dated 5th February, 2000 clearly discloses that in order to occupy the post of Superintendent, the educational qualification of H.S.C. is sufficient. Undoubtedly, the candidates having qualification of B.P.Ed. are to be given preference. There is no dispute that the petitioner has both these qualifications. In such circumstances, we fail to understand how the respondent No.5 could have informed the other respondents that the petitioner does not satisfy the required educational qualification. The learned advocate for the petitioner is also justified in contending that the defence which was sought to be raised before the School Tribunal about the absence of D.Ed. qualification is no more available as the said issue stands concluded by the decision of the School Tribunal. Undoubtedly, the order of the School Tribunal has not been challenged by any of the respondents.

7. For the reasons stated above, therefore, the impugned order cannot be sustained and is liable to be quashed and set aside. The petitioner is entitled to continue to be employed in the post of Superintendent and would be entitled for all necessary benefits i.e. increment, if any, in the pay scale, in accordance

with the provisions of law. The respondents to comply with all such requirements within a period of eight weeks. The petition, therefore, succeeds. The impugned order/communication dated 31st March, 2000 is hereby quashed and set aside. The rule is made absolute in above terms.

8. The costs of Rs.3,000/- to be paid on behalf of the respondent No.3 to the petitioner. Initially, the costs shall be paid by the concerned authority and thereafter the same shall be recovered from the officer, who is responsible for the failure on his part to render assistance to the Court in this matter. The concerned authority shall fix necessary responsibility in that regard and recover the said amount.

(R.M.S.KHANDEPARKAR, J)

(NARESH H.PATIL, J)